

RICHARD L. SELTZER

IBLA 72-44

Decided November 7, 1972

Appeal from a Nevada State Office, Bureau of Land Management, decision (Nev. 5713) rejecting a petition for deferment of assessment work.

Affirmed.

Mining Claims: Assessment Work

A temporary deferment of annual assessment work on a mining claim will not be granted where, although the claimant alleges some legal difficulties involving the claim, he does not show that his right to enter upon the claim has been obstructed.

APPEARANCES: Richard L. Seltzer, pro se.

OPINION BY MR. RITVO

Richard L. Seltzer has appealed to the Secretary of the Interior from a Nevada State Office, Bureau of Land Management, decision rejecting a petition for deferment of annual assessment work on several mining claims on the grounds that the petition did not relate conditions under which a deferment could be granted.

The appellant, a resident of Indianapolis, Indiana, jointly holds 12 placer claims with Merle I. Zweifel and others. The claims were located and recorded in Lyon County, Nevada, in 1970. A copy of one certificate of location furnished by appellant, states that Zweifel located the claims for himself and seven other locators and that Zweifel had performed all location and discovery work necessary to complete the location. Appellant alleges that, in the year which followed, he received letters from Zweifel indicating assay and assessment work were being done on their locations. However, on July 15, 1971, he says, the Attorney General of the State of Nevada obtained a temporary restraining order and impounded a large number of Zweifel mining claim affidavits. Further action, he continues, for a preliminary injunction was initiated and, therefore, most land in Nevada associated with Zweifel is now the subject of litigation.

Under the General Mining Laws of 1872, mineral assessment work of at least \$100 must be performed on each claim during each year until patent issues. The period during which assessment work must be done commences on the first day of September succeeding the date of location. R.S. 2324; 30 U.S.C. § 28 (1970). As co-owners, Zweifel, Seltzer and the other locators were separately and collectively responsible for the annual assessment work. Since neither Zweifel nor anyone else had done any of the required assessment work, the claims were subject to being relocated on September 1, 1971. On July 23, 1971, Seltzer filed a petition requesting a one-year deferment for all nonperformed assessment work on the 12 placer claims. Seltzer denied any knowledge of Zweifel's failure to meet the statutory requirements for assessment work and attempted to show that the correspondence he had received had led him to a reasonable belief that the work was being fulfilled. The State Office, in the decision dated July 30, 1971, denied Seltzer's petition for deferment, stating that his petition did not relate conditions under which deferment may be granted. Seltzer filed an appeal on August 8, 1971.

The Secretary of the Interior has discretionary authority to grant a temporary deferment of annual assessment work on a mining claim or group of mining claims where the claimant submits satisfactory evidence that:

* * * [S]uch mining claim or group of claims is surrounded by lands over which a right-of-way for the performance of such assessment work has been denied or is in litigation or is in the process of acquisition under State law or that other legal impediments exist which affect the right of a claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof. 63 Stat. 214; 30 U.S.C. 28b (1970).

Since there is no right-of-way controversy, appellant is entitled to relief only if he can show that there are other legal impediments which affect his right to go upon the claim. While he has alleged legal difficulties of some sort, he has not shown in any way that his right to enter upon the claims has been obstructed. Accordingly he is not eligible for the relief provided by the statute. James R. Eck, 6 IBLA 263 (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from is affirmed.

Martin Ritvo, Member

We concur:

Douglas E. Henriques, Member

Frederick Fishman, Member

